

The Legal Position of Marriage Agreement Deeds in the Context of Providing Protection for Husbands and Wives

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Abstract. *Having a Prenuptial Agreement or agreement before marriage is important because it provides protection for both husband and wife. This research aims to determine and analyze the legal position of prenuptial agreement deeds in order to provide protection for husbands and wives in Rembang Regency. This type of research is Sociological Law, the approach method used by the author is Qualitative, the research data sources used by the author are Primary data, Secondary data and Tertiary data, data collection methods use library research, then observation in the field and also conducting interviews with sources. The results of research on the Legal Position of Prenuptial Agreement deeds in order to provide protection for husbands and wives, namely that with the existence of a marriage agreement, the relationship between husband and wife will feel safe because if one day their relationship breaks down and even ends in divorce, then there is something that can be used as a legal basis and guidance to provide protection for both parties. The legal consequences of the legal position of a prenuptial agreement deed in order to provide protection for both husband and wife are by entering into a prenuptial agreement before the marriage to protect both parties, both husband and wife, so that there is legal certainty.*

Keywords: Agreement; Deeds; Marriage; Protection.

1. Introduction

Marriage is a very sacred and important thing in human life, marriage that occurs between a man and a woman which results in physical and spiritual well-being towards the families of each community and also with the wealth of each community and also with the wealth obtained between them both before or

during the marriage.

In the current era of globalization, Indonesian society requires legal certainty regarding pre-nuptial agreements, especially for prospective husbands and prospective wives, to protect every right of each party.¹

Based on Article 1 of Law Number 1 of 1974 concerning Marriage, what is meant by marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God. Law Number 1 of 1974 concerning Marriage consists of 14 chapters covering 67 articles². Law Number 1 of 1974 concerning Marriage regulates the minimum marriage age for women at 16 years and men at least 19 years, but has been revised in Law Number 16 of 2019 which states that the minimum age for women is 19 years and men also 19 years to get married.

The implementation of regulations regarding pre-nuptial agreements or marriage agreements is not yet very visible in Indonesia because Indonesian society still considers pre-nuptial agreements to be very taboo in some communities. Prenuptial agreements (Prenuptial Agreements) are unusual and are considered unusual, materialistic, unethical and not in accordance with Indonesian culture. Because prenuptial agreements are made for the benefit of legal protection of the assets inherited by each party, including husband and wife. This becomes a quite sensitive issue when one of the prospective couples intends to propose to make a pre-nuptial agreement (*Akad*).

The pre-nuptial agreement must be approved and signed by both parties on a voluntary basis and/or without coercion or pressure from any party, because if one of the parties feels forced, due to threats or pressure, the pre-nuptial agreement is legally declared void and has no force. A pre-nuptial agreement with an authentic deed made before a notary so that it has the strength of legal value and proof. So that each party gets justice according to the agreement in the contents of the agreement³. When the marriage takes place, the pre-nuptial agreement must also be ratified by the marriage registrar at either the Religious Affairs Office (KUA) or the Civil Registry Office where the marriage takes place.⁴

¹ABDURRAHMAN ZAID, 2021, Prenuptial Agreement Practices in Depok City., UIN Jakarta page 2

²K. Wantijik Saleh, 1980, Marriage Law in Indonesia, cet.ke 7, Publisher PT Ghalia Indonesia, Jakarta, p. 4

³ <https://fc4importanters.wordpress.com/2015/05/21/perkerjaan-pra-nikah/> Accessed on 01 June 2023, at 09.00 WIB

⁴ <https://wolipop.detik.com/read/2013/03/08/101338/2189258/854/step-by-step-buat-perkerjaan-pranikah-bersama-calon-suami> Accessed on 01 June 2023 at 09.23 WIB

2. Research Methods

The method used for this research is a juridical-empirical approach. The research specification used is descriptive analysis. The data used are primary data and secondary data, primary data is filled with interviews and secondary data is obtained from literature studies. The data analysis method used in this research is a qualitative analysis method and the theoretical framework used to answer the problem formulation uses legal certainty theory and theory of legal protection.

3. Results and Discussion

3.1. Marriage Agreement Deed Law in Order to Provide Protection for Husband and Wife in Rembang Regency

Marriage in the Civil Code and Law Number 1 of 1974 concerning Marriage is an agreement regarding the property of husband and wife during their marriage, which deviates from the principles or patterns established by law.⁵

A marriage legally entered into by husband and wife will have consequences and consequences in the legal field, one of which is in the field of property law. Husband and wife who are bound by a legal marriage will have property both acquired before the marriage and during the marriage.

In Article 1 number 1 UUJN Number 2 of 2014, the definition of a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. The definition given by UUJN Number 2 of 2014 refers to the authority exercised by a notary.

This means that a notary has duties as a public official and has the authority to make authentic deeds as well as other authorities regulated by UUJN No. 2 of 2014. Meanwhile, the authority of a notary in making marriage agreement deeds is stated in Article 15 paragraph (1) UUJN No. 2 of 2014, namely making authentic deeds regarding deeds, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in authentic Deeds, guaranteeing the certainty of the date of making the Deed, storing the Deed, providing grosses, copies and quotations of the deed, all this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law.

Based on the results of the interview with Notary Sumini, the process of making

⁵Istianty Annisa, Priambada Erwan. 2015. Legal Consequences of Marriage Agreements Made After the Marriage Has Taken Place, Private Law. Volume III. No. 2, Pg. 87

a marriage agreement deed, first, the two couples come to the notary's office to submit a photocopy of their KTP, a photocopy of their family card, and submit a draft of the contents of the marriage agreement. Second, the Notary will draft a marriage agreement in accordance with statutory provisions and contain agreements that have been agreed upon by both parties. Third, the parties involved must witness both partners signing the marriage agreement deed before a notary. Fourth, register or record the marriage agreement deed with the District Court and ratify it at the Disdukcapil Office.

The process of making a marriage agreement deed before a notary must be completed a week before the marriage takes place. This is because the Sumini Notary Office has only served to make marriage agreement deeds before the marriage takes place, so the marriage agreement deed must be valid before the date of the marriage.

In general, a marriage agreement contains arrangements for the assets of the future husband and wife.⁶With a marriage agreement, the relationship between husband and wife will feel safe because if one day their relationship breaks down and even ends in divorce, then there is something that can be used as a legal basis and support.

3.2. Legal Consequences of the Legal Position of Marriage Agreement Deeds in the Context of Providing Protection for Husbands and Wives in Rembang Regency

Article 149 of the Civil Code expressly states that after the marriage takes place, the marriage agreement cannot be changed in any way. This is different from Law Number 1 of 1974 concerning Marriage, where in article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage it is stated that the marriage agreement cannot be changed unless there is agreement from both parties and it does not harm third parties. .

The principle of the irreversibility of the marriage agreement is related to the marital property system chosen by the husband and wife at the time of the marriage which raises the basic concern that during the marriage the husband can force the wife to make changes that are not desired by the wife.

According to the theory of legal protection, in essence, the prohibition on changing a marriage agreement is to protect the interests of third parties, namely preventing losses from possible abuse by husband and wife, who intentionally done to avoid responsibility. However, based on the principle of *lex*

⁶Happy Susanto, 2008, Division of Gono-Gini's Assets When Divorce Occurs, cet. 3rd, Visimedia, Jakarta, p. 78

specialis derogat lex generalis, what is used as the legal basis for changing a marriage agreement is Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage. If an agreement is not categorized as a commercial contract, then it can be said that the agreement has no legal consequences and therefore the parties who make it are not bound (not to be legally bound).⁷

Domestic contracts refers more to personal relationships (the subject matter) rather than legal relationships between the parties who create them. The most important thing is that a marriage agreement cannot be categorized as a commercial contract. Therefore, if in the implementation of the marriage agreement there is a violation committed by one of the parties, then the party who feels aggrieved cannot file a lawsuit on the basis of breach of contract.

The five *petitum* alternatives as regulated in article 1267 of the Civil Code above, are no longer irrelevant for application in marriage agreement disputes. Sanctions against husbands or wives who do not carry out their obligations are only in the form of moral sanctions. The legal consequences in the case of position Number 526/Pdt.G/2012/PN.Jkt.Sel, namely that the amended Marriage Agreement Deed is declared null and void because if it is related to the conditions for the validity of the agreement, namely in article 1320 of the Civil Code, the amended marriage agreement deed:

- a. Based on an agreement or agreement, where the parties entering into the agreement have free will, that is, for these parties there is no element of coercion, fraud or error in entering into the agreement. In this case, the husband and wife agree to change the marriage agreement.
- b. The parties must be legally competent to enter into an agreement. To make an agreement, the parties entering into the agreement are capable of having the authority or right to take legal action as regulated in the applicable legislation. In this case the husband and wife are legally competent.
- c. The agreement made must clearly agree about certain things. In this case, the marriage agreement contains information about assets and profit and loss.
- d. Matters agreed upon by the parties must be halal and must not conflict with the law, public order and morality. In this case, the amended marriage agreement is contrary to public order and morality, namely that the previous marriage agreement contained responsibility for family interests being borne by both the husband and wife, but the amended marriage agreement contained

⁷Fayza Mifta Fauzia Risanto, Thesis: "Pre-Marital Agreements in the Perspective of Islamic Law and Positive Law in Indonesia" (Surakarta: Surakarta Muhammadiyah University, 2020), pp. 2-3

responsibility for family interests being borne by the husband only. So this change violates public order and decency.

4. Conclusion

The process of implementing a marriage agreement deed, first, the two partners come to the notary's office and submit a photocopy of their KTP, a photocopy of their family card, and submit a draft of the contents of the marriage agreement. Second, the Notary will draft a marriage agreement in accordance with statutory provisions and contain agreements that have been agreed upon by both parties. Third, the parties involved must witness both partners signing the marriage agreement deed before a notary. Fourth, namely registering or recording the marriage agreement deed with the District Court and ratifying it at the Dispendukcapil. And the legal consequences after making changes to the marriage agreement result in the marriage agreement deed being null and void because it does not meet the objective requirements in article 1320 of the Civil Code.

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